

## EXHIBIT 43

STAR AUTO SALES, et al. v. VOYNOW, BAYARD, et al.  
Hugh Whyte --- January 31, 2023

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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STAR AUTO SALES OF BAYSIDE, INC.  
(d/b/a STAR TOYOTA OF BAYSIDE),  
STAR AUTO SALES OF QUEENS, LLC  
(d/b/a STAR SUBARU), STAR HYUNDAI  
LLC (d/b/a STAR HYUNDAI), STAR  
NISSAN, INC. (d/b/a STAR NISSAN),  
METRO CHRYSLER PLYMOUTH INC. (d/b/a  
STAR CHRYSLER JEEP DODGE) STAR AUTO  
SALES OF QUEENS COUNTY LLC (d/b/a  
STAR FIAT) and STAR AUTO SALES OF  
QUEENS VILLAGE LLC (d/b/a STAR  
MITSUBISHI),

Plaintiffs,

-against-

VOYNOW, BAYARD, WHYTE and COMPANY  
LLP, HUGH WHYTE, and RANDALL  
FRANZEN,

Case No.  
18-cv-05775  
(ERK) (TAM)

Defendants.

-----X

January 31, 2023  
10:41 a.m.

Deposition of HUGH WHYTE, taken by  
Plaintiffs, pursuant to Notice, held at the  
offices of Milman Labuda PLLC, 3000 Marcus  
Avenue, Suite 3W8, Lake Success, New York,  
before Lisa Hiesiger, a Shorthand Reporter  
and Notary Public within and for the State  
of New York.

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A P P E A R A N C E S :

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Also Present:

JACQUELINE CUTILLO  
ROBERT SEIBEL  
RANDY FRANZEN

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2 flow-through entities and they're enormous  
3 companies, and when you're dealing with a  
4 37 percent federal tax rate, a 13.3 percent tax  
5 rate for California, you'd better make sure  
6 you've got the right numbers.

7 Q. Would it be possible for these types  
8 of large companies that you're referring to to do  
9 the tax returns from Voynow's office?

10 A. It's possible.

11 Q. Approximately how many car  
12 dealerships or auto groups did Voynow perform  
13 services for during this period of time that  
14 we've been discussing?

15 A. I don't know. I wouldn't even guess  
16 at a count.

17 Q. Would you say it's in the hundreds?

18 A. I don't know.

19 Q. What is the largest auto group that  
20 Voynow performed services for during that period?

21 MS. FITZGERALD: How are you defining  
22 large, in terms of revenue, in terms of --

23 Q. In terms of revenue?

24 A. Probably Potamkin during that time.

25 Q. What's the largest in terms of the

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2 number of dealerships within a group?

3 A. Probably, I don't know, 20 or 30  
4 dealerships in a group.

5 Q. Which group is that that had 20?

6 A. Probably Potamkin.

7 Q. What would be the second largest in  
8 terms of revenue?

9 A. Probably Sloane.

10 Q. Where would you say Star fits in with  
11 respect to let's say Potamkin and Sloane?

12 A. Probably 20 percent of the size.

13 Q. Where would you say Star fits with  
14 respect to all of the dealership groups that  
15 Voynow performed services for in terms of size,  
16 based on revenue?

17 A. I wouldn't even be able to guess.  
18 You know, you could have a dealership where the  
19 fees are 20,000 a year up to fees that are half a  
20 million dollars a year, so...

21 Q. Would you categorize Star as one of  
22 Voynow's smaller automotive clients?

23 A. No. I always said Star were big  
24 businesses and they generated a lot of income.  
25 So it was very important for us being in New York

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2 and the tax rates up here along with the federal  
3 to really be on top of the numbers as far as  
4 calculating quarterly estimates. So with those  
5 size dealerships, I think you have to go into the  
6 field to do that.

7 Q. But my question is where would you  
8 place Star in terms of size with respect to all  
9 of Voynow's automotive group clients?

10 A. I would say a large group.

11 Q. Approximately on average, how much  
12 would Potamkin pay Voynow on an annual basis for  
13 the work Voynow performed?

14 MS. FITZGERALD: What time period?

15 MR. FELSEN: During the time period  
16 that we've been discussing.

17 A. 350,000.

18 Q. What services did Voynow perform for  
19 Potamkin?

20 A. Tax services.

21 Q. Just preparation of tax returns?

22 A. Uh-huh, yes.

23 Q. Did Voynow perform financial  
24 statement engagements for Potamkin?

25 A. At some point we did, but then just

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2 went to tax services.

3 Q. What about Sloane, how much did, on  
4 average, Voynow charge Sloane for the services?

5 A. Probably 350.

6 Q. What about Star, how much did Voynow  
7 charge Star during the period of time on an  
8 annual basis?

9 A. Probably 100,000.

10 Q. What factors go into the decision in  
11 terms of how much to charge Voynow clients?

12 A. It's really based on how many hours  
13 are involved to do the engagement.

14 Q. Does Voynow for the period of time  
15 that we're talking about have a written  
16 engagement with Potamkin and Sloane?

17 A. We don't do Potamkin anymore, but  
18 during the time we had engagement letters.

19 Q. And what did those engagement letters  
20 say that Voynow would be doing for Potamkin?

21 A. Tax returns.

22 Q. That's all that the engagement letter  
23 said was that Voynow would perform tax returns?

24 A. Yeah, the letter that you showed me  
25 with the tax engagement. With Sloane it's OCBOA

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2 of her tax returns and documents  
3 reflecting the payment of that invoice --  
4 those invoices.

5 Q. Did Michael Koufakis directly tell  
6 you to perform the tax preparation work for any  
7 employees?

8 MS. FITZGERALD: Other than what he  
9 just testified.

10 A. The only one I remember is Paul  
11 Provenzano.

12 Q. He told you specifically to do that?

13 A. Either me or Randy, one of us.

14 Q. I know you were at Star only for that  
15 initial meeting or that other meeting?

16 A. Yeah.

17 Q. Did you have conversations with  
18 Michael other than the ones when you were there  
19 in person?

20 A. Yeah.

21 Q. What kind of conversations would you  
22 have with Michael?

23 A. Michael called me up in April of '17  
24 and said, hey, I think we have a problem up here  
25 and, you know, I think Vivian was stealing, and



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2 he started to describe what was going on, and I  
3 said, hey, Mike, look, what you're describing  
4 sounds like collusive fraud, you'd better put  
5 everybody on hiatus right now until you get your  
6 arms around this and see what's going on. And he  
7 said no, no, no, no, Debbie would never steal  
8 from me, she is as clean as the wind driven snow.  
9 I said, Mike, you're not thinking straight, put  
10 everybody on hiatus until you get your arms  
11 around this. So that's the conversation I had  
12 with him.

13 Q. Did you suspect at that point that  
14 Debbie or Vivian may have stole from the  
15 dealership?

16 A. I don't know. All I know is he told  
17 me Vivian may have stole a lot of money. I said  
18 is Debbie there. He said, yeah, but they drive  
19 in every day in the same car. I said, oh, my  
20 God, you might have collusive fraud here, just  
21 get rid of all these people until you get your  
22 arms around this.

23 Q. When was this conversation?

24 A. In April of '17.

25 Q. Did you have any other conversations